Raja Salim v Public Prosecutor

HIGH COURT (KUALA TERENGGANU) — CRIMINAL REVISION NO 43–02 OF 1999
ABDUL KADIR SULAIMAN J
15 JUNE 1999

Road Traffic *— Disqualification — Driving without insurance cover — Application for revision of disqualification order — Road Transport Act 1987 s 90(2) & (3)*

The defendant had been charged for two offences under ss 23(1) and 90(1) of the Road Transport Act 1987 respectively. He pleaded guilty to both and was accordingly convicted. For the second offence, besides imposing a fine the court, under s 90(2), also disqualified the defendant from holding or obtaining a Class D driving licence for a period of 12 months from the date of conviction.

The defendant being dissatisfied with the disqualification order, applied to the High Court for a revision over the said order. Citing the proviso to s 90(3), he said that he should not be disqualified for the following reasons: (1) he had forgotten to renew the insurance in respect of his vehicle and was caught merely five days after it had expired; (2) being self-employed, the vehicle is essential for him to earn a living to support his family including eight school-going children; and (3) he did not know that he would be disqualified when he pleaded guilty.

Held, affirming the disqualification order:

Under s 90(2) of the Road Transport Act 1987, upon a conviction, it is mandatory upon the court to make an order that the person convicted be disqualified from holding or obtaining a driving licence for a minimum period of 12 months from the date of the conviction. Furthermore, the provision in the proviso to s 90(3) is not a provision to exempt a person convicted from the disqualification order made pursuant to s 90(2) but is a provision to prevent a person from being convicted for an offence under the said sub-s (2). The defendant having pleaded guilty and accordingly convicted for the offence, and the disqualification order being mandatory upon conviction, the reasons given by the defendant cannot be valid reasons to exempt the disqualification imposed (see p 138G–139C).

[Bahasa Malaysia summary

Defendan telah dituduh untuk dua kesalahan di bawah s 23(1) dan s 90(1) Akta Pengangkutan Jalan 1987 masing-masing. Dia telah mengaku bersalah untuk kedua-duanya dan telah disabitkan. Untuk kesalahan kedua, selain daripada mengenakan denda, mahkamah di bawah s 90(2), juga tidak membenarkan defendan daripada memegang atau memiliki lesen memandu Kelas D selama 12 bulan dari tarikh sabitan.

Defendan yang tidak puas hati dengan perintah hilang kelayakan tersebut, telah memohon kepada Mahkamah Tinggi untuk menyemak semula perintah tersebut. Dengan membangkitkan s 90(3), beliau berkata bahawa beliau tidak sepatutnya hilang kelayakan kerana alasan-alasan berikut: (1) beliau telah lupa untuk memperbaharui insurans berkenaan dengan kenderaannya dan telah ditahan hanya lima hari selepas ia luput; (2) kerana bekerja sendiri, kenderaan itu adalah perlu baginya untuk mendapatkan pendapatan untuk menyara keluarganya termasuk lapan kanak-kanak yang masih bersekolah; dan (3) beliau tidak tahu bahawa beliau boleh disingkirkan apabila beliau mengaku bersalah.

Diputuskan, mengekalkan perintah hilang kelayakan:

Di bawah s 90(2) Akta Pengangkutan Jalan 1987, selepas suatu sabitan, adalah mandatori bagi mahkamah untuk membuat perintah bahawa orang yang disabit hilang kelayakan daripada memegang atau mendapat lesen memandu untuk tempoh minima selama 12 bulan daripada tarikh sabitan. Selanjutnya, peruntukan tersebut di dalam proviso s 90(3) bukanlah peruntukan untuk mengecualikan seseorang yang disabitkan daripada perintah hilang kelayakan yang dibuat menurut s 90(2) tetapi adalah suatu peruntukan untuk menghalang seseorang daripada disabitkan untuk kesalahan di bawah sub-s (2) tersebut. Selepas defendan mengaku bersalah dan kemudian disabitkan untuk kesalahan, dan perintah hilang kelayakan adalah mandatori selepas sabitan, alasan-alasan yang diberikan oleh defendan bukanlah sebab-sebab yang sah untuk mengecualikan pengenaan hilang kelayakan (lihat ms 138G–139C).]

Notes

For cases on driving without insurance cover, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 50–51.

Legislation referred to

Road Transport Act 1987 ss 23(1), 90, (1), (2), (3)

Applicant in person.

Wan Mohd Norisham Yaakob (Deputy Public Prosecutor) for the respondent.

Abdul Kadir Sulaiman J: Raja Salim, the applicant, was charged in the magistrate's court on two charges, respectively, for an offence punishable under s 23(1) and one under s 90(1) punishable under sub-s (2) of the Road Transport Act 1987 ('the 1987 Act'). The offences were said to have been committed on 20 March 1999 at 9.40 am. He pleaded guilty to both the charges and for each of the charges he was convicted and fined RM150 and in default 15 days imprisonment. He paid the fine imposed in respect of the two offences. As for the second offence, under s 90(2) the applicant, apart

from being fined, was also disqualified from holding or obtaining a Class D driving licence for a period of twelve months from the date of the conviction.

The applicant applied to the High Court for a revision over the order of the learned magistrate disqualifying him from holding or obtaining a driving licence as mentioned above. He said that he should not be so disqualified for the following reasons under the proviso to s 90(3) of the 1987 Act:

(1) The insurance in respect of his vehicle No TP 2836 expired on 15 March 1999. He forgot to renew it until he was caught by the authority on 20 March 1999. He renewed his insurance cover on 21 March 1999.

(2) He has eight school-going children. He is self-employed and the vehicle is essential for him to earn his living to support his family. If he is disqualified from driving it would be difficult for him to earn his livelihood to support the family.

(3) When he pleaded guilty before the learned magistrate on the two charges, he did not know that his driving licence would be disqualified. He thought he would be fined only.

I call this matter up for revision for the reason that there appears to be some misunderstanding over the operation of the proviso to s 90(3) of the 1987 Act. The said sub-s (3), including the proviso, states as follows:

(3) *A person disqualified by virtue of a conviction under this section* or of an order made thereunder from holding or obtaining a driving licence shall, for the purposes of Part II, be deemed to be disqualified by virtue of a conviction under the provisions of this part:

Provided that a person *shall not be convicted of an offence against this section* if he proves —

(a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or loan;

(b) that he was using such vehicle in the course of his employment; and

(c) that he neither knew, nor had reason to believe, that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of this part. (Emphasis added.)

Under sub-s (2) of s 90 thereof, upon a conviction unless the court for special reason to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, it is mandatory upon the court to make an order that the person convicted be disqualified from holding or obtaining a driving licence for a minimum period of twelve months from the date of the conviction. Therefore, for such mandatory order to be made, there must first be a conviction under that sub-section. In other words, the mandatory disqualification results from the conviction for an offence under s 90(2) thereof. However, the proviso to sub-s (3) thereof prohibits a certain class of persons from being convicted of such an offence under sub-s (2). Obviously, therefore, without a conviction there cannot be an order for disqualification under the said sub-section.

From the above analysis, it is clear that the provisions in the proviso to s 90(3) is not a provision to exempt a person convicted from the

disqualification order made pursuant to s 90(2) but is a provision to prevent a person from being convicted . For an offence under the said sub-s (2). The said proviso is conjunctive in its operation in that all the three conditions stipulated therein must be satisfied before a person charged could escape the conviction.

Turning to the facts in this case of the applicant Raja Salim, he pleaded guilty to the second charge and was accordingly convicted for the offence. He was satisfied with the fine imposed. All that he wants now is to be exempted from the disqualification order made under s 90(2) of the 1987 Act for the reasons he gave. The disqualification order being mandatory upon a conviction (unless the court for special reasons to be specified in the order thinks fit to order otherwise) the reasons he gave cannot be valid reasons to exempt the disqualification imposed as otherwise no person can ever be disqualified under the sub-section upon a conviction on the facts of his case.

In his case, even if he challenges the conviction, the proviso under sub-s (3) will not be available to him as a defence to avoid the conviction because conditions (a) and (c) in particular are not applicable to him. The said motor vehicle belongs to him and he cannot claim that he neither knew, nor has reason to believe, that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of Part IV of the 1987 Act. His forgetfulness in the matter caused him to contravene s 90 thereof.

Accordingly, the sentence and the order of disqualification imposed by the learned magistrate upon the conviction of the applicant on the second charge under s 90(2) of the 1987 Act are correct, legal and proper. In the circumstances, the findings, the sentence imposed, and the order of disqualification made by the learned magistrate are hereby affirmed as the applicant's application lacks any merit for this court to disturb the order made by the learned magistrate.

Disqualification order affirmed.

Reported by Joel Ng